

Sky Island Alliance
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SKY ISLAND ALLIANCE

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October 14, 2003

Jerry Pell, Ph.D., CCM
NEPA Document Manager
Office of Electric Power Regulation
Fossil Energy, FE-27

CC: Jerry Conner, Coronado National Forest; Sue Kozacek, Acting Supervisor,
Coronado National Forest

RE: Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft
Environmental Impact Statement

Dear Mr. Pell:

1 Thank you for this opportunity to publicly comment on the Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement (DEIS). The following comments are made on behalf of Sky Island Alliance. But although we do appreciate the opportunity we are troubled by the fact that DOE and cooperating agencies have been unwilling to provide a formal extension to the public review and comment period provided for this project. The proposed power line raises very important and extremely complicated issues and the limited comment period provided is insufficient to give the public an adequate opportunity to review and comment on it. We emphasize that DOE is obligated to diligently involve the public in this project and therefore ask that you provide a written justification for DOE's refusal to extend the public review and comment period

The Sky Island Alliance (SIA) is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code dedicated to the preservation and restoration of native biological diversity in the sky islands of New Mexico and Arizona. SIA practices science-based conservation by gathering data, making recommendations to land and wildlife agencies, and working with them to resolve issues. In the past our organization has sponsored public lectures, educational presentations, and field trips in order to inform the general public on regional environmental issues and concerns. In addition, SIA publishes a newsletter that informs more than a thousand members and volunteers of federal agency policy and encourages public participation in agency decisions. Finally, SIA provides written and spoken testimony at public hearings and publishes articles in

Comment No. 1

The public comment period began on August 22, 2003, and officially concluded on October 14, 2003, for a total of 53 days. An extension of the comment period was not granted because the Federal agencies deemed this comment period to be reasonable, and it exceeded the requirements set forth by CEQ Regulations (40 CFR 1506.10[c]) for a Draft EIS public comment period of at least 45 days. Although the official public comment period for comments on the Draft EIS closed on October 14, 2003, the Federal agencies continued to accept comments after the close of public comment periods, and considered them, to the extent feasible, in the preparation of the Final EIS.

Section 1.6 of the Final EIS has been revised to explain the process conducted by the Federal agencies to invite public participation in the NEPA process, per CEQ requirements.

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magazines and newspapers such as *Bowhunter*, *Audubon*, *Bioscience*, and the *Arizona Daily Star*, all of which serve to disseminate information about important events and to foster an appreciation for and desire to preserve the sky islands.

Introduction:

We have examined and analyzed the Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement. We are puzzled by many things contained within but are most baffled by the DOE's decision to select the Western Route as it's preferred alternative. After attending the four public hearings in Green Valley and Nogales, we are more perplexed than ever.

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You are probably aware that the public opposition to this project was unanimous and the issues of most concern were the possibilities of construction in either the Western or Crossover Routes. This was the same message that earlier public hearings conveyed. Furthermore, there is unanimous opposition from conservation groups and their members to either the Crossover or Western Routes; affected Tribes are opposed to these two routes. We know of no one who supports this route. Why is the Western route the preferred alternative?

We can only surmise that this decision is tied to the Arizona Corporation Commission's approval of the Western Route only. As it is the pertinent federal land management agency's responsibility to oversee federal public lands, this action sets a bad precedent. These types of decisions are not within the expertise of the ACC. The ACC's decision was not based on environmental compatibility with public land use and the effect on the public. This decision was solely about serving TEP's self interests. It is ludicrous to allow TEP to build a powerline so large that the main benefit is the financial gain of TEP, while simultaneously impacting thousand of acres of the highest quality view-shed on the Coronado National Forest; within the Tumacacori Ecosystem Management-Area there are more than 50 sensitive species, a scenic perennial water source (Sycamore creek), countless rare and native plants that provide valuable genetic resources, and numerous scenic and recreational opportunities that people come from all over the US to explore. Who benefits here? Although TEP would like us to believe otherwise, it certainly is not the public.

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As will be examined in detail below, the Department of Energy (DOE) failed to sufficiently address numerous and important issues regarding this project. The DEIS fails to consider all the reasonable alternatives as required by the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ). The purpose and need of the project is overly narrow so as to preclude other reasonable alternatives. The document's slight references to cumulative effects analysis are sorely inadequate to comply with NEPA and CEQ regulations. Further, DOE fails to appropriately address the illegal road densities on the Coronado National Forest (CNF) and its attempt at mitigation of such densities only serves to add to the problem of road damaged resources on the landscape. The DEIS is based on inaccurate and illegal FS delineations of

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Comment No. 2

Section 1.4 of the Final EIS discusses the rationale for DOE's identification of a preferred alternative in the Draft EIS and identifies the preferred alternative designated by each Federal agency. Section 1.6.6 explains that the decisions of each Federal agency will be explained in their respective RODs, or as a letter of concurrence in the case of the USIBWC. Section 1.1.2 of the Final EIS provides information regarding the ACC proceedings that led the ACC to order TEP to build its line along the Western Corridor.

Comment No. 3

The commentor provides a summary of specific issues that are responded to in comments 4 through 11 below.

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inventoried roadless areas. The "analysis" of impacts to flora, fauna, sensitive, threatened, and endangered species cannot properly be called an analysis and, in the specific context of the affected lands within the CNF, fails to ensure the diversity and viability of biological species. Merely stating that a project will pass through an area and noting the different species that live there does not even approach what is necessary to comply with federal law. Also, the DEIS fails to ensure that the FS is in compliance with executive orders and forest regulations that require the closure of areas on the forest in which off-road vehicles have caused "considerable adverse effects." In addition, all of the proposed projects violate NFMA, the Coronado National Forest Plan, and the principle of multiple use as embodied in the Multiple-Use, Sustained-Yield Act of 1960 because they fail to abide by the FS' Recreation Opportunity Spectrum and its Scenery Management System. The DEIS also fails to acknowledge that all of the proposed projects will open a new migration corridor for drug smugglers and illegal immigrants, which will both spread the Border Patrol even thinner and create more impacts on this pristine area. Finally, the DEIS does not address cultural impacts of the project sufficiently. It is especially troubling that consultation with the tribes was not completed prior to the release of the DEIS.

SIA urges the DOE and cooperating agencies to seriously consider the following comments as it is our view that this document is severely insufficient for the scope of this project. As the DEIS does not meet legal requirements, we urge DOE to withdraw this DEIS and reissue it at a later date when the below mentioned deficiencies are appropriately redressed.

Implementation of Any of the Proposed Alternatives Would Violate the National Environmental Policy Act Because the DEIS Fails to Provide Appropriate, Reasonable, and Obvious Alternatives:

The National Environmental Policy Act (NEPA) requires agencies to consider "[a]lternatives to the proposed action in the EIS. 42 U.S.C.A. § 4332(C)(iii). NEPA further states that agencies must "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." *Id.* at § 4332(E). Pursuant to the NEPA, the Council for Environmental Quality (CEQ) requires that agencies "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). The regulations also mandate an agency to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). In addition, the ninth circuit has stated that to comply with NEPA and the CEQ, all "obvious" alternatives must also be considered. *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 784 (9th Cir. 1980).

Any decision stemming from this DEIS would violate both NEPA and the CEQ regulations because of the absence of any reasonable alternatives to the environmentally devastating transmission line proposals; that is, the DEIS fails to consider a power generating station located in Nogales, an appropriate, reasonable and obvious alternative

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Comment No. 4

The EIS has been revised to include a more extensive explanation (in Section 1.2, Purpose and Need) of the roles of TEP and the Federal agencies in developing alternatives for the proposed project. In permit proceedings such as TEP's, where an applicant seeks permission for a specific proposed project to meet the applicant's specific purpose and need, the Federal agencies generally limit their review to alternatives similar to the one proposed, i.e., that is, alternatives that would meet the applicant's purpose and need. The agencies generally do not review alternatives that are not within the scope of the applicant's proposals. Similarly, the Federal agencies do not compel a permit applicant to alter its proposal or its purpose and need, but instead they decide whether a permit is appropriate for the specific proposal as the applicant envisioned it. It is not for the agencies to run the applicant's business or to compel an applicant to change its proposal: DOE evaluates the project as offered. Therefore, in an applicant-initiated process, the range of reasonable alternatives analyzed in detail is limited to those alternatives that would satisfy the applicant's purpose and need and that the applicant would be willing and able to implement, plus the no-action alternative. All of the alternatives analyzed in this EIS were either suggested by or similar to alternatives suggested by TEP.

This approach is particularly apt where, as here, the proposed action reflects a state's decision as to the kind and location of electrical infrastructure it wants provided within its boundaries. The ACC is vested with the authority to decide how it believes energy should be furnished within Arizona's borders, including the need for, the location of, and the effectiveness of transmission lines within its borders. See the discussion at Section 1.1.2 and 1.2.2 of the EIS with respect to the respective jurisdictions and authorities of the state and Federal agencies, and their relationship to this NEPA review. TEP's proposal has the dual purpose of addressing problems of electrical reliability in Santa Cruz County, Arizona, and crossing the border to eventually interconnect with the Mexican electrical grid. Alternatives that would not satisfy both elements of this dual purpose are not reasonable alternatives for the Federal agencies to consider in detail.

Thus, during the course of this NEPA review, the Federal agencies have considered alternative routes for TEP's proposed transmission line, but have not deemed feasible proposed alternatives that contemplate construction of

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to the costly, unsightly, and publicly disfavored transmission lines currently proposed. The DEIS dismisses the alternative of a power plant located in Nogales because it will not fulfill the "[r]equirement to build a second transmission line to serve customers in Santa Cruz County by December 31, 2003." DEIS at 2-11. This argument makes no sense because there can be no realistic expectation that any of the proposed projects will meet this deadline and therefore, should not be used to eliminate such an alternative as sound as a local power plant.

Furthermore, according to CEQ, the "[s]cope of alternatives to be considered" depends on what is "reasonable rather than whether the proponent or applicant likes or is itself capable of carrying out a particular alternative." NEPA's Forty Most Asked Questions, at <http://ceq.eh.doe.gov/nepa/regs/40/1-10.HTM#1>. The range of alternatives here violates this guideline because they are all based on the self-serving purpose and need of TEP rather than on what is "reasonable." Taken in light of overwhelming public request for a local power plant alternative and absolute opposition to the proposed projects as expressed in recent public hearings, SIA urges DOE to redraft the DEIS so as to comply with NEPA and CEQ regulations by including a local power plant as an appropriate, reasonable, and obvious alternative to the three transmission line proposals.

The DEIS looks to no other alternative but that of lengthy transmission lines through remote and scenic areas. Similar to the facts of *State of California v. Block*, "[t]he policy at hand demands a trade-off between" pristine wild areas and development. 690 F.2d 753, 766 (9th Cir. 1982) (holding that the Forest Service's EIS did not address an adequate range of alternatives because none of the alternatives considered more than one third of the land in question to be designated as wilderness and the EIS assumed that at least thirty seven percent of the area in question would be developed.); See also *Muckleshoot Tribe v. U.S. Forest Service*, 177 F.3d 800, 813(9th Cir. 1999) (holding that the FS failed to consider a reasonable range of alternatives because the EIS considered only the no action alternative and two "virtually identical" alternatives). As the court stated in *Block*, "[t]his trade-off... cannot be intelligently made without examining whether it can be softened or eliminated by increasing resource extraction and use from already developed areas." *Id.* Similarly, the DEIS here fails to consider options that would not involve destroying a pristine and scenic area in the name of development even though such an alternative is available. Like the court stated of the Forest Service in *Block*, "[i]t is troubling" that the DOE "[s]aw fit to consider from the outset only those alternatives leading to that end result," that of destroying the resource. *Id.* at 767. The local power plant must be considered as a serious alternative to the transmission line proposals in order to comply with the reasonable alternative mandate of NEPA and the CEQ regulations; this is the only way to "[f]oster informed decision-making and informed public participation," a further requirement of NEPA. *Id.*

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Comment No. 4 (continued)

power plants or transmission lines that differ in capacity from those that the ACC has directed TEP to construct.

As explained in Section 2.1.5, a new power plant in Nogales is not a viable alternative to a new, second transmission line (part of TEP's proposal). Therefore, the alternative of a new power plant is not evaluated in detail in this EIS.

The DEIS' Statement of the Purpose and Need of the Proposed Project is Too Narrow in Violation of NEPA, CEQ Regulations, and Case Law:

According to NEPA and CEQ, an EIS must specify the underlying purpose and need to which the proposal is responding. 40 C.F.R. § 1502.13 (requiring a statement that "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."). The ninth circuit has interpreted these regulations such that "the stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms." *City of Caramel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *See also Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800 (9th Cir. 1999). SIA contends that the DEIS states the purpose and need of the TEP project in "unreasonably narrow terms."

TEP has failed to adequately show a need for a 345kv power line. While their mandate from the Arizona Corporation Commission is to provide backup power for Santa Cruz County, their proposed solution is akin to killing a mosquito with a machine gun. The need for backup power in Santa Cruz County could be accomplished by a power generation station in Nogales or by an additional 115kv line. A second 115kv would also be less expensive and it would be possible to install such a line within the Central route with little or no modification to the existing utility corridor. More importantly, this line could be easily buried along the Central route so as to conserve scenic integrity for residents living in the area. But instead of considering these reasonable alternatives, TEP has defined its purpose and need based on its own self-serving interests, that of making a profit. By defining the purpose and need of the project in overly narrow terms, the DEIS has failed to uphold the requirements of NEPA and CEQ as interpreted by the ninth circuit.

The Cumulative Effects Analysis in the DEIS is Insufficient to Comply with NEPA and CEQ Regulations and Guidelines:

The Council on Environmental Quality (CEQ), pursuant to the National Environmental Policy Act (NEPA) not only requires that "cumulative impacts," be analyzed but also used in determining the appropriate actions to pursue. Cumulative impacts are defined in CEQ regulations as the "[i]mpacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency...or person undertakes such actions." 40 C.F.R. § 1508.7. CEQ also acknowledged that "[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time." *Id.* Examples of cumulative impacts affecting this project include off-road vehicle use, wildcat roads, grazing, and urban sprawl.

Furthermore, the CEQ has acknowledged that "[t]he fact that the human environment continues to change in unintended and unwanted ways in spite of improved federal decisionmaking resulting from the implementation of NEPA is largely attributable to [cumulative impacts]." Considering the Cumulative Effects Under the National

Comment No. 5

As stated in Section 1.2, Federal Agencies' Purpose and Need Statements, an agency's statement of purpose and need explains what the agency is called upon to do, given its authority, and it is from this statement of purpose and need that an agency identifies the range of reasonable alternatives it will consider in the EIS. In an applicant-initiated process, such as TEP's proposed project, the range of reasonable alternatives analyzed in detail in the EIS is directly related to the applicant's purpose and need. TEP's purpose and need for the proposed project, as provided to DOE in TEP's Presidential Permit Application, is "...to construct a double-circuit 345 kV, alternating current transmission line to interconnect the existing electrical systems of TEP and Citizens Utilities ("Citizens") in Nogales, Arizona, with a further interconnection to be made from Nogales, Arizona to the CFE transmission system located in Sonora, Mexico." Therefore, the purpose and need statements in Section 1.2.2 are not unreasonably narrow.

In order to meet the international connection aspect of TEP's purpose and need, a 345-kV transmission line is required. If TEP's proposed project is approved by each of the Federal agencies, then there would still be a variety of events that could preclude TEP from implementing this project. Issuance of a Presidential Permit by DOE would only indicate that DOE has no objection to the project, but would not mandate that the project be built. The USFS and BLM would also not mandate that the project be built. But if it were going to be built, TEP would have to build it within the time limits specified in the permits issued by the Federal agencies.

A new power plant in Nogales is not a viable alternative to a new, second transmission line (part of TEP's proposal). Likewise, a smaller transmission line in lieu of the proposed 345-kV transmission line (e.g., a 115-kV transmission line) would not meet the international interconnection aspect of TEP's proposal. Therefore, these alternatives are not evaluated in detail in this EIS (see Section 2.1.5, Alternatives Considered But Eliminated From Further Analysis).

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Environmental Policy Act, Council on Environmental Quality, v (Jan. 1997) (hereinafter CEQ guidelines).

The DEIS fails to adequately assess cumulative impacts overall or to assess these impacts for each separate alternative as required by NEPA and the CEQ. According to the CEQ's guidelines for assessing cumulative impacts, it is "critical to incorporate cumulative effects analysis into the development of alternatives for an...EIS." *Id.* at v. This is because CEQ recognizes that "[o]nly by reevaluating and modifying alternatives in light of the projected cumulative effects can adverse consequences be effectively avoided or minimized." *Id.* Furthermore, as the guidelines state, "[t]he results of cumulative effects analysis can and should contribute to refining alternatives and designing mitigation." *Id.* at vii. Finally, CEQ states that "[b]y definition, cumulative effects *must* be evaluated...[for] each alternative." *Id.* at 1 (emphasis added). Here, the DEIS fails miserably in two ways to follow this guideline. First, none of the eliminated alternatives received cumulative effects analysis prior to being eliminated and second, TEP failed to consider cumulative effects with respect to each of the surviving alternatives. Both of these flaws significantly hamper the ability of the public and the decisionmaker to have a "[c]lear basis for choice among options" and renders the EIS severely inadequate under NEPA. 40 C.F.R. § 1504.4.

Further, the DEIS fails to address cumulative effects "[w]ithin the context of resource, ecosystem, and human community thresholds." CEQ Guidelines at 7. Thresholds are defined as "[l]evels of stress beyond which the desired condition degrades." *Id.* It is impossible to determine the impact of cumulative effects if no consideration is made as to the threshold of the given environment. As CEQ states, "[t]he magnitude and extent of the effect on a resource depends on whether the cumulative effects exceed the capacity of the resource to sustain itself." *Id.* at 7. Here, the DEIS does not even address such thresholds let alone analyze how the cumulative effects would impact the environment with respect to such thresholds.

For example, the Forest Service has specified that the CNF has a threshold road density of one mile of road per square mile of forest. Although the DEIS states that the road density in this region does not exceed this threshold, it fails to consider wildcat roads in its analysis even though it acknowledges that wildcat roads equal more than 50% of all of the roads within the proposed areas for action. This important omission in turn produces a fatal flaw in DOE's cumulative impact analysis; it fails to acknowledge both that the forest is already well above its threshold for roads and that the proposed project will only increase the stress and degradation in the given areas. Furthermore, this problem is not alleviated by TEP's promise to close one mile of road per one mile constructed because the forest is already dangerously over its threshold for roads. As the CEQ states, "[t]he most effective cumulative effects analysis focuses on what is needed to ensure long term productivity or sustainability of the resource." *Id.* at 8. Any such analysis is utterly absent from the DEIS.

Cumulative impact analysis is particularly important given the USFS' current roads policy. In context of a forest transportation system, in many instances the length of the

Comment No. 6

Chapter 5 of the EIS presents an analysis of cumulative impacts, as required under NEPA, which could occur as a result of the potential impacts of TEP's proposed project when added to impacts from other past, present, and reasonably foreseeable future actions. Where specific information was available on past, present, and reasonably foreseeable future actions, it was included in the EIS; relevant information received from the public during the Draft EIS public comment period was also added to the Final EIS (e.g., information on planned residential developments was added to Section 5.2.4). Section 5.1, Cumulative Impacts Methodology, in the Final EIS has been revised to clarify that the analysis identifies where cumulative impacts may differ among alternatives, and Section 5.3, Cumulative Impact Analysis, has been revised in the Final EIS to more completely assess the potential cumulative impacts.

In addition, Table 5.4-1 has been added to the Final EIS to provide a summary comparison of the cumulative impacts by resource area, and identify any differences in cumulative impacts for the Western, Central, and Crossover Corridors. For example, for the actions described as reasonably foreseeable actions in the area of Nogales, Arizona, the cumulative impacts would not differ among TEP's alternatives because the Western, Central, and Crossover Corridors are identical in the vicinity of Nogales.

Regarding the comment that the EIS should either include or address a habitat fragmentation analysis and meaningful analysis of cumulative impacts, a spatial analysis of roads on the Coronado National Forest associated with the proposed project in relation to natural and cultural resources was conducted in the Roads Analysis (URS 2003a) and was relied upon for evaluation of the direct and indirect environmental impacts of the proposed project (see Chapter 4), and cumulative impacts (see Chapter 5). Additional information regarding habitat fragmentation has been added to sections 3.3.2 and 4.3.2.

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roads and the overall road density of the forest, while critically important to effective NEPA analysis, is a limited metric of impacts, and, in particular, cumulative impacts. In order for decisions to comply with NEPA, the underlying analysis must account for spatial analysis on the landscape. The DEIS should therefore incorporate a habitat fragmentation analysis that includes data concerning all roads – whether classified, unclassified, temporary, or wildcat – and which overlays spatial data for affected natural and cultural resources. We feel that this information is absolutely necessary to “insure the professional integrity, including scientific integrity, of the discussions and analyses in” the DEIS. 40 C.F.R. § 1502.24. At the very least, the DEIS needs to disclose a why such an analysis was not conducted. 40 C.F.R. § 1502.22(b)(1)-(4).

Additionally, the CEQ and NEPA require more than a laundry list of possible cumulative effects as illustrated in the CEQ Guidelines. *See Id.* at Chapter 5 “Methods, Techniques, and Tools for Analyzing Cumulative Effects (implicitly acknowledging that agencies must do more than create a list of possible cumulative effects of proposed actions but must also analyze the significance of such effects using available science, technology, etc.). The cumulative effects analysis is fatally deficient because it is simply a laundry list of possible negative impacts from the proposed project in light of other possible uses and projects. It does not meaningfully analyze these effects using appropriate science or technology and fails completely to provide data that would allow a “clear basis for choice” or “meaningful analysis” for decisionmakers or the public. 40 C.F.R. §1502.9(a). Moreover, the DEIS fails to disclose why these effects were not disclosed, and why any underlying information necessary to consider these effects, was not obtained. 40 C.F.R. § 1502.22(b)(1)-(4).

Finally, cumulative effects analysis is essential to determine whether substantive legal requirements are satisfied. For example, without a sufficient cumulative effects analysis, the Forest Service is unable to ensure compliance with the National Forest Management Act’s requirement to ensure the continued diversity of plant and animal communities and the continued viability of wildlife. 16 U.S.C. § 1604(g)(3)(B); 36 C.F.R. § 219.19. The TEP project’s failure to adequately address cumulative effects suggest that within the Coronado National Forest, the diversity and viability of biological species is not ensured.

The CEQ regulations require that draft environmental impact statements “[f]ulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of [NEPA].” *Id.* Additionally, the regulations state that “[i]f a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” *Id.* Here, the DEIS fails to comply with this mandatory requirement. The document’s meager laundry list of possible cumulative effects of the proposed project, its blatant omission of cumulative effects with respect to each alternative, its utter neglect to analyze cumulative effects when deciding what alternatives to eliminate, and its failure to ensure the diversity and viability of species within the CNF all serve to “preclude meaningful analysis” such that a new revised draft must be prepared.

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Comment No. 6 (continued)

The calculations of road density referenced in Section 3.12, Transportation, were done correctly as part of the Roads Analysis (URS 2003a) for the proposed project, as required by Forest Service Manual 7712 in accordance with the USDA Forest Service Miscellaneous Report FS 643 (1999) as guidance. The Tumacacori EMA of the Coronado National Forest in and of itself does not exceed classified road density limits set forth in the Forest Plan. Road density limits set forth in the Forest Plan are for the Forest as a whole, not for individual land units or EMAs within the Coronado National Forest. TEP would close 1.0 mi (1.6 km) of existing classified road for every 1.0 mi (1.6 km) of proposed road to be used in the operation or long-term maintenance of the proposed project on the Coronado National Forest, such that road density on the Coronado National Forest would not be affected. Any authorization issued to implement the proposed project on the Coronado National Forest would contain terms and conditions to ensure road barrier effectiveness and maintenance. Based on the measures described above for ensuring the effectiveness of road closures, the proposed project is consistent with Forest Plan standards and guidelines for road density.

The Draft EIS was prepared in accordance with Section 102(2)(c) of NEPA, the Council of Environmental Quality (CEQ) regulations (40 *Code of Federal Regulations* [CFR] Parts 1500-1508), and all applicable laws, regulations, and agency policies. The Federal agencies have determined that the Draft EIS does not need to be re-issued for additional review.

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Furthermore, the DEIS acknowledges its own inadequacies in its discussion regarding visual resources. "Further evaluation of potential cumulative visual impacts is currently underway by DOE in consultation with USFS. The results of this evaluation will be included in the Final EIS." DEIS at 5-9. To not adequately address an issue as crucially important to meaningful decisionmaking as cumulative effects, the DEIS fails to "satisfy to the fullest extent possible the requirements" of CEQ regulations and NEPA.

TEP's Proposed Projects Violate the National Forest Management Act and NEPA with Regard to Road Densities:

The National Forest Management Act (NFMA) states that "resource plans and permits... for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 USC § 1604(i). The Coronado National Forest Plan explicitly requires the forest service to "limit density of *existing* and new road construction to one mile of road or less per square mile [of forest]." Coronado Forest Plan Amendment No. 8, June 1996 (Replacement Page 34), Wildlife and Fish, 12(d) (emphasis added). Furthermore, upholding such road density standards is a basic provision to protect forest resources and is particularly important given the FS' new management obligations as articulated in their roads policy. See 36 C.F.R. § 212; See also FSM 7700 and 7710.

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However, while the DEIS claims that the Forest service (USFS) "[h]as indicated that current road density is estimated to be near this level," this statement is severely inaccurate. Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement, 3-93, July 2003 (hereinafter DEIS). The DEIS figure for existing road density in the Tumacacori Ecosystem Management Area (EMA) is limited to classified roads as their figures plainly show. It states that there are approximately 320 miles of classified roads located within the EMA and that the EMA consists of 203,800 acres of forest land. DEIS at 3-93. Doing the math, 203,800 acres, or approximately 318 square miles, illustrates that the road density within the EMA approaches legal limits only if classified roads (as opposed to all *existing* roads as the Forest Plan clearly requires) are taken into account. Further, as the DEIS also indicates, the percentage of wildcat roads in all of the proposed project areas exceeds that of classified roads. DEIS, at 3-93 to 3-95 (stating that 54% of "existing" roads in the Western Corridor are wildcat roads, 65% of "existing roads in the Central Corridor are wildcat roads and 58% of "existing" roads in the Crossover Corridor are wildcat roads). Finally, as the Forest Plan states, the road density standard is for all "existing roads" and not just limited to classified roads. Therefore, if the proposed project areas are representative of the overall situation within the EMA, the road density not only is not "near" the acceptable levels, it is over double the acceptable limit as mandated by the Coronado National Forest Plan.

While the DEIS states that the road density on the forest will not change because TEP proposes to close one mile of road for every one mile of new road constructed, as can be seen from the numbers, this is not enough to ensure that the proposed projects are

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Comment No. 7

The response to Comment 6 above clarifies that the proposed project is consistent with Forest Plan standards and guidelines for road density. The proposed project does not violate the Forest Plan, NFMA, or NEPA with regard to road densities on the Coronado National Forest.

The commentor is correct in stating that wildcat roads cannot be used during project implementation without undergoing NEPA analysis. The environmental analysis and disclosure provided by this Final EIS fulfills this requirement for NEPA analysis. (See the response to comment 6 above).

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Comment No. 8

The analysis in the Final EIS correctly relies on the IRAs defined in Volume 2 of the *Forest Service Roadless Area Conservation Final Environmental Impact Statement* (USFS 2000) to determine potential impacts of the proposed project. The method used by the Coronado National Forest to identify the IRAs in the *Forest Service Roadless Area Conservation Final Environmental Impact Statement* is outside the scope of this EIS.

According to USFS's Murphy Peak Quadrangle map, Apache Pass is approximately 1.25 mi (2.01 km) west of the planned Western Corridor route. Apache Pass is not within an IRA, as specified in Volume 2 of the *Final Environmental Impact Statement for the Roadless Area Conservation Rule*.

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consistent with the Forest Plan. DEIS at 2-6. And because NFMA requires that all projects on the forest comply with the Forest Plan, the proposed projects not only are in violation of the Coronado Forest Plan, but they also violate NFMA. 16 U.S.C. §1604(i). Therefore, none of the proposed projects should be adopted until and unless they comply with federal law.

As written, the proposed projects would be in violation of NEPA and the CEQ regulations. Even as the DEIS acknowledges that "[w]ildcat roads have not been subjected to the USFS planning process, and therefore, may not meet technical or environmental protection standards, they may pose a threat to both the environment and to user safety," they still propose to use them for right of ways. DEIS at 3-94, 95. Without the requisite environmental analysis, these roads remain illegal and in violation of NEPA and cannot be legitimized until the appropriate procedural channels such as drafting an environmental impact statement and allowing for public participation, have been undertaken.

Furthermore, the DEIS assumes that system roads within the EMA have undergone NEPA. We are not so convinced. There are substantial questions as to whether adequate NEPA analysis has been conducted within the EMA for the existing system roads. The fact that system roads may not have undergone NEPA prior to their incorporation within the forest road system undermines the legitimacy of the TEP project and its DEIS as it pertains to roads within the Coronado National Forest. Responsible officials must ensure that the roads on the forest proposed for use by TEP, whether wildcat or classified, have undergone appropriate environmental analysis or the project will be in violation of federal law.

Fundamentally, in the context of roads and road densities, the current DEIS is wholly inadequate to satisfy NEPA's procedural mandates and the Forest Service's substantive mandates.

The Identified Inventoried Roadless Areas on the CNF Is Not Accurate Because the FS Illegally Changed Roadless Area Boundaries in 2000:

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In 1979 the Coronado National Forest (CNF) completed a congressionally mandated inventory of potential Wilderness Areas. This process was called the second Roadless Area Review and Evaluation more commonly referred to as RARE II. As a result of the RARE II process, twenty-one areas on the CNF were deemed "Roadless" and recommended for Wilderness designation, non-Wilderness uses, or a third classification called Further Planning which allowed upcoming Forest Plans to individually assess the Wilderness Characteristics of so designated areas.

The Tumacacori EMA contained three RARE II areas as defined by the Final Environmental Impact Statement of the Roadless Area Review and Evaluation II issued in January 1979. Unit # 03-114, named Tumacacori, was comprised of 51,490 acres that encompassed the majority of the Tumacacori and Atascosa Mountains, including Apache

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Pass and Bartolo Mountain. Throughout the Final EIS process, 03-114 was moved from a recommendation of "Wilderness" to "Further Planning". Interestingly, while the final step in the analysis clearly stated that 03-114 was deemed as "Further Planning", we see a "non-Wilderness" recommendation in the published Final EIS. There was no justification recorded for this change. In November 1983, the CNF revised its RARE II maps and issued their "Revised Roadless Area Boundary". In this review, the Tumacacori unit changed slightly, approximating 46,000 acres (based on digitized data originating from 1:127,000 maps located at CNF Supervisor's Office – see attached map). Again, the area around Bartolo Mountain and Apache Pass were included and actually expanded.

Regardless, the Tumacacori roadless area was not included in the 1984 Arizona Wilderness Act. This was in light of the fact that throughout the 1979 RARE II process, 399 letters were received by the CNF supporting Wilderness designation in unit 03-114. 31 letters were received that did not recommend Wilderness designation (only 20% of which were site specific).

The RARE II process of the late 1970's was intended to first *identify* then *analyze* the roadless characteristics of Forest lands. The 1983 revision process in preparation for the 1984 Arizona Wilderness Act was similar in intent and changed little. Throughout this process, the area was field checked, ranked, and analyzed for Wilderness potential. It is important to note that this identification process was clearly spelled out by the RARE II Draft EIS and included a variety of different means of analyzing a particular area. It is also important to note that in 1984 Congress intended for the FS to revisit the roadless area and Wilderness question during a Forest Plan Revision process, to occur "at least every fifteen years" 98 U.S.C.A. § 1485 (1984).

In May 2000 the FS issued a Draft EIS entitled "Forest Service Roadless Area Conservation". This national policy was precipitated by a mandate given on October 13th, 1999 by President Clinton directing the FS to "provide appropriate long-term protection for most or all of these *currently* inventoried 'roadless' areas, and to determine whether such protection is warranted for any smaller 'roadless areas not yet inventoried'" (emphasis added). At that time, the 1983 Revised Roadless Area Boundaries on the CNF were the most accurate and up-to-date depictions of roadless areas on the forest. In preparation for this rulemaking, the Forest Service Washington Office (WO) released a memo to Regional Offices requesting roadless area information (File Code 1920 Nov. 12, 1999). In this memo, the WO specifically requests "geospatial data displaying National Forest System lands *currently* inventoried for planning purposes as roadless areas (emphasis added). In enclosure 1 of this same memo, the WO requests

"geospatial data (GIS coverages or maps) displaying National Forest System lands inventoried (as of October 13, 1999) for planning purposes as roadless areas. This inventory is based on forest plans, forest plan revisions in progress where the Agency has established an inventory (this information should be in Appendix C of most forest plans), or other assessments that are completed and adopted by the Agency. RARE II inventory information should only be used if a

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forest does not have a more recent roadless area inventory *which was established using RARE II information.*" *Id.* (emphasis added)

Further, this memo clearly articulates the fact that each Forest was expected to use already existing roadless area information that has or was in the process of going through analysis *outside* of the 2000 Roadless Area Conservation rulemaking. The rulemaking was clearly not intended to actually *identify* roadless areas (see DEIS Forest Service Roadless Area Conservation May 2000). Additionally, Federal law clearly outlines the process for the identification of roadless areas in CFR Sec. 219.17, Evaluation of Roadless Areas. It states:

- (1) During analysis of the management situation, the following areas shall be subject to evaluation:
- (i) Roadless Areas including those previously inventoried in the second Roadless Area Review and Evaluation (RARE II), in a unit plan, or in a forest plan, which remain essentially roadless and undeveloped, and which have not yet been designated as wilderness or for nonwilderness uses by law. In addition, other essentially roadless areas may be subject to evaluation at the discretion of the Forest Supervisor.

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Again we clearly see reference to RARE II areas and their importance as at least a starting point for the identification of roadless areas.

Given the repeated and clear direction of the WO and federal law, the CNF did not consider RARE II areas or the 1983 Revised Roadless Area Boundaries when they submitted their Inventoried Roadless Area maps to the WO for inclusion in the 2000 Roadless Area Conservation DEIS and 2001 FEIS.

The CNF did not properly assess, propose, and define roadless areas in the 2000-2001 Roadless Area Conservation Rule. Considering the above information and given further that the Coronado National Forest:

- Failed to use existing roadless information and created their own, never seen before data *after* October, 1999 – against well-intentioned and legally advisable direction from the WO as given in the November 12, 1999 Regional Office memo (File Code 1920)
- Failed to identify and analyze their new Inventoried Roadless Area maps under the National Environmental Policy Act of 1969. The maps as seen in the 2000 DEIS of the Roadless Area Conservation Rule had not gone through a public process, as required by NEPA. The maps had never even been seen outside of the Coronado National Forest before being published in the 2000 Roadless Area Conservation Rule DEIS.
- Failed to use a process that would accurately assess existing roadless areas. Instead of using existing data (RARE II) or already proven protocol for roadless area identification, the CNF used the Recreational Opportunities Spectrum (ROS), which has never been intended to actually *identify* roadless areas.

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- Failed to accurately identify roadless areas on the Forest. For instance, in the Tumacacori RARE II area 03-114, Apache Pass and Bartolo Mountain are connected to the larger bulk of the roadless area. While no new roads have been built in this area since 1979 when RARE II identified the roadless boundaries, the 2000 IRA, using the fundamentally flawed ROS program, did not accurately display similar roadless area boundaries. Apache Pass is not shown within the Roadless Area – even though no new roads have been built.
- ROS illegally identified roadless areas on the CNF. The 2000 Inventoried Roadless Area maps submitted and displayed in the 2000 Roadless Area Conservation Rule DEIS was simply created drawing 0.5 or 1.0 mile buffers around every Forest Service Road and naming whatever “fell out” as an IRA. The 1984 Wilderness Act, among other Congressional language specifically states in Sec. 101 (d) “The Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters of buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.” This language makes the intent of Congress clear – buffers around Wilderness Areas, much less Inventoried Roadless Areas should not be utilized or promoted. Given this, the CNF used a minimum of 0.5 mile buffers on *each* side of every road, even if that road no longer existed. When asked in 2000 why this was so, the Coronado National Forest responded that they did not want the “sights and sounds” of roads within the Inventoried Roadless Areas, in direct contradiction to Congressional language.

We are seriously concerned that the path of the preferred Western Route passes directly through Apache Pass, an Inventoried Roadless Area that was not properly or legally assessed in the CNF’s recent roadless area mapping project in preparation for the 2001 Roadless Area Conservation Rule. The area is clearly roadless. See the attached map for a comparison between the 1983 Revised Roadless Area Boundaries and the 2001 Inventoried Roadless Area maps. While almost nothing has changed on the ground, the maps are vastly different. The 1983 RARE II based map includes Apache Pass, the 2001 IRA map does not. Counterintuitively, the 1983 map is more accurate.

Consequently, the Inventoried Roadless Area as shown and described in the Tucson Electric Power Company Sahuarita-Nogales Transmission Line DEIS is not correct. The correct Inventoried Roadless Area in the Tumacacori EMA clearly should include Apache Pass. The consequences of such changes in the Inventoried Roadless Area map would have dire consequences for the proposed Western Route. The Western Route would no longer avoid the Inventoried Roadless Area, but actually cross it. The building of permanent roads in Inventoried Roadless Areas is currently not allowed. We feel that this change would constitute a new analysis of the Western Route and require serious consideration of other alternatives.

All of the Proposed Projects Are in Violation of Forest Service Regulations, NFMA, and Case Law for Failing to Appropriately Address Management Indicator Species:

Pursuant to NFMA, the FS is required to "provide for a diversity of plant and animal communities." 16 U.S.C. § 1604(g)(3)(B). Regulations implementing this provision state more specifically that the FS must manage habitat to "maintain viable populations of existing native and desired non-native vertebrate species." 36 C.F.R. § 219.19. The regulations also require certain species to be designated as "management indicators" and that "planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species." Finally, "population trends of the management indicator species will be monitored and relationships to habitat changes determined." 36 C.F.R. § 219.19(a)(1) and (6).

The courts have held that "[t]he clear language of the regulations... requires evaluation of 'both amount and quality of habitat and of animal population trends of the management indicator species.'" *Sierra Club v. Martin*, 168 F.3d 1, 7(11th Cir. 1999) (quoting 36 C.F.R. § 219.19(a)(2)). The court in *Sierra Club* also concluded that "population data must be collected" to be in compliance with the regulations. *Id.* (stating that "[d]espite... the fact that some MIS populations in the forest are actually declining, the Forest Service has no population data for half of the MIS... and thus cannot reliably gauge the impact of the timber projects on these species.").

Likewise, in *Forest Guardians v. U.S. Forest Service*, the court held that under the plain language of the FS' multiple use implementing regulations, the FS "[m]ay not rely solely on habitat trend data as a proxy for population data or to extrapolate population trends." 180 F.Supp.2d 1273, 1281 (D.N.M. 2001). The court further acknowledged that management indicator species already "[r]epresent a management short cut... [and] consequently, there is generally no reason to further short cut the management monitoring process by relying only on habitat trends to project management indicator species population data." *Id.* at 1281-82. In conclusion, the court held the FS responsible for obtaining and analyzing both actual and trend population data for each of the management indicator species located in the project area before coming to a decision. *Id.* at 1282.

Further, while the ninth circuit has held that an agency may use habitat trend data as a proxy for population data, *Inland Empire Public Lands Council v. USFS*, 88 F.3d 754 (9th Cir. 1996), this holding was sharply limited in *Idaho Sporting Congress v. Rittenhouse*, 305 F.3d 957 (9th Cir. 2002) (holding that the United States FS' use of old-growth habitat as proxy for population monitoring of indicator species was arbitrary and capricious.). It is our view that, in the context of the Coronado National Forest and the proposed project, using habitat trend data as a proxy for population data is inadequate. The FS has failed to document or justify any conclusion to the contrary. Thus, the FS on the Coronado is responsible for obtaining both population and trend data and ensuring that such data is used within the DEIS for the TEP project to ensure the diversity of plant and animal species and the viability of vertebrate species.

Comment No. 9

The Final EIS includes revised information and analysis of MIS in sections 3.3.5 and 4.3.5 respectively. The revised information is based on information from sources, including but not limited to sources such as the 2003 Arizona Game and Fish Department Wildlife Survey Report and North American Breeding Bird Survey from 1980 to 2000. More information is provided in the MIS report (SWCA 2004) and bibliography in the project record. Additionally, a recent USFS MIS Report has been prepared. This report is listed in the references (Chapter 11 of the EIS) and is available upon request to the USFS.

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The DEIS identifies numerous MIS which occur or have suitable habitat within the proposed project areas, including the Mexican spotted owl, white-tailed deer, gray hawk, and gila woodpecker. However, in contravention to NFMA, NFMA's implementing regulations, and case law, the DEIS is utterly lacking in the requisite quantified population data and thus fails to provide reliable estimates of population trend. The document merely provides a list of the MIS that may be present within the proposed project areas and states simply that the projects "[have] the potential to adversely impact MIS within the Tumacacori EMA... by both direct and indirect impacts" but then concludes dismissively that "[t]he proposed projects are not expected to result in any downward population trends for MIS." DEIS at 4-66-67. It is difficult to imagine that an analysis of impacts on MIS consisting of four sentences can possibly be sufficient to comply with the plain language of the regulations or the requirements as interpreted by the courts. *Id.* On the contrary, the DEIS falls far short of what is required by law and must be redrafted to ensure meaningful public participation and responsible decisionmaking.

Furthermore, DOE cannot escape this obligation by arguing that forest level monitoring is outside the scope of the project. As the courts in both *Sierra Club* and *Forest Guardians* hold, the requirements for MIS analysis is a *project-specific* as well as a programmatic requirement. *Sierra Club* at 6; *Forest Guardians* at 1280; See also *Utah Environmental Congress v. Zieroth*, 190 F.Supp.2d 1265, 1271 (D.UT. 2002) (concluding that because the FS failed to collect data on population, "the [FS'] approval of the *project* without actual or trend population data is contrary to governing regulations.").

The DEIS Fails to Ensure Compliance With Executive Orders 11644 and 11989 and the Code of Federal Regulations Regarding Considerable Adverse Effects:

Pursuant to Executive Orders (EO) 11644 and 11989, the Code of Federal Regulations (CFR) requires the FS to analyze the effects of off-road vehicle (ORV) use on the land and if it is determined that such use will

"[c]ause *considerable adverse effects* upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence." 36 C.F.R. 295.5 (emphasis added).

There is no question that illegal ORV use is a serious problem on the CNF. In the Tumacacori EMA, the DEIS acknowledged that greater than fifty-percent of the existing roads within the proposed project areas are wildcat roads and that these are mainly attributed to illegal ORV use. DEIS at 3-93- 95. However, DOE fails to ensure that that the FS is in compliance with EO 11644 and 11989 and the CFR. Particularly, it fails to

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Comment No. 10

Section 3.1.2 states that there is off-highway vehicle use in the project area, and Section 4.1.2 analyzes the impacts of off-highway vehicle use as one of many recreational uses of the project area, including the Coronado National Forest.

The USFS Southwestern Region (which includes the Coronado National Forest) published a Draft EIS (USFS 2003b) addressing the regulations at 36 CFR 295.5 (codifying the requirements of Executive Orders 11644 and 11989), which authorize Federal land management agencies to manage off-highway vehicle travel in ways that protect public resources, promote safety, and minimize conflicts between users. Access management needs are not addressed by the Draft EIS, but are reserved for individual analysis at the site-specific level. The Coronado National Forest was not included in this regional analysis because it does not share common boundaries with other proclaimed National Forests and cross-country travel, except in limited circumstances, was already prohibited on the Coronado National Forest by the Forest Plan. User-created roads and trails are a subset of the existing roads and trails (unclassified) found on the ground on National Forest System lands, but are not part of the permanent (classified) transportation network. Such roads and trails will remain unclassified until site-specific analysis and planning determines the appropriateness of including them in the permanent transportation network and whether they should be permanently closed.

The purpose of the EIS is to assess the direct, indirect, and cumulative environmental impacts of the reasonable alternatives. The USFS manages the CNF in accordance with all applicable laws, regulations, and Executive Orders. Whether or not the USFS is in compliance with a specific Executive Order is beyond the scope of the EIS.

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document whether the FS has fulfilled its obligation to close areas where there are "considerable adverse effects" presently on the landscape or where ORV use is likely to cause considerable adverse effects in the future as required by the executive orders. In light of previously stated facts that the road density within the EMA is over fifty-percent wildcat roads and that this density far exceeds what is allowed according to the CNF plan, it is hard to imagine that the FS is anything but in violation of EO 11644, EO 11989, and 36 C.F.R. 295.5. Furthermore, with such hard data it would be difficult to conclude anything other than that ORVs are causing considerable adverse effects on the EMA. Finally, any proposed project within such an area is also not in compliance with the law if it fails to address the legal mandates required by the Executive Orders and the Code of Federal Regulations in its environmental analysis.

In conclusion, it is critical to note that the FS cannot evade its legal obligations to take action where there are or there is a likelihood of considerable adverse effects by passively acquiescing to impacts. The FS, pursuant to forest regulations, has an affirmative obligation to prevent both existing and the likelihood of future considerable adverse effects.

The Proposed Projects Violate the Multiple-Use Sustained Yield Act and NFMA Because They Fail to Abide by the Coronado National Forest's Recreation Opportunity Spectrum:

The USFS adopted the Recreation Opportunity Spectrum (ROS) pursuant to the multiple-use principle as laid out in the Multiple Use Sustained Yield Act (MUSYA) and NFMA, www.fs.fed.us/r2/gmug/policy/unc_travel/ch3_ros.pdf ("Direction given in the regulations to implement terms of [NFMA] of 1976 provides further direction to provide for a broad spectrum of recreation opportunities."). The ROS system therefore, is important to achieving the overall principle of multiple-use on the forest. While all three corridors violate the ROS system, recreation on the Western and Crossover corridors will be the most severely affected by the transmission lines.

Within the Western Corridor there are two areas of semi-primitive motorized land equaling a total of 21.3 miles. DEIS at 3-8. TEP states that only two setting indicators in the semi-primitive motorized areas will be impacted to the "unacceptable" level. These setting indicators are Facilities and Site Management and Naturalness. DEIS at 4-9. According to the FS, "unacceptable" is defined as conditions where "[s]ignificant management changes are necessary to bring the setting back into its desired state." www.fs.fed.us. Further "[i]n some cases where site changes are not possible to rectify unacceptable conditions, the agency may consider changing the allocation to fit actual ground conditions." www.fs.fed.us. Therefore, the proposed project located in the Western Corridor will force the FS to change its semi-primitive motorized designation to one that is more developed in order to "fit actual ground conditions." In light of the FS' mandate to manage the national forests under a system of multiple-use, this is inappropriate. As the FS itself acknowledges, keeping a designation at "[t]he more

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Comment No. 11

In response to this and other comments, Sections 3.1 and 4.1 of the FEIS include revised text to clarify how the ROS is used, more fully describe the analysis of potential ROS changes, and correct some inaccuracies and omissions in the DEIS.

The ROS is a management tool used by the USFS to describe and evaluate a spectrum of recreational settings, opportunities, and experiences. It is a system to map and manage a variety of recreational opportunities on National Forest System lands. As used in this EIS, the ROS provides a consistent basis for evaluating the effects of the proposed action on forest recreation. The effects analysis described in the EIS considered each of the seven setting indicators as distinctly different criteria under each of the various ROS settings. For example, the visible impacts of the support structures and conductors were considered under the Naturalness setting indicator, rather than under Visitor Impacts, as suggested by the commentor. This is appropriate because the support structures are physical structures, not human visitors. The methodology and interpretation of the ROS analysis described in Section 4.1.2 are consistent with FS guidelines.

The analysis found that the proposed action would introduce changes in ROS setting indicators that are identified as not compatible with one or more of the 7 setting indicators. However, each setting must be viewed in its entirety. Therefore, when considering the overall impact on each area the powerline would cross, none of the action alternatives alone would change the overall character of the recreational experience available within most areas sufficiently to shift the ROS setting into a different ROS category. It should be noted that other utility corridors on the Coronado National Forest have not, in and of themselves, influenced the mapping of ROS settings. Finally, and perhaps most importantly, because it is easier to shift ROS settings from the primitive to the urban direction along the spectrum than the reverse (because once physical developments are in place it is unlikely that they will be removed), continuing to manage these areas under current ROS categories will best protect the remaining character of these recreation settings; changing ROS settings along the corridor might allow for additional future impacts.

As the commentor notes, the Western and Crossover Corridors were found to have greater impacts on ROS settings than the Central Corridor. However, the only ROS setting that might be permanently changed by the

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primitive end of the spectrum allows greater future options; it is more difficult to revert a developed category toward the less developed end of the spectrum and once lost, it is questionable whether a primitive setting can be restored.”

www.fes.fed.us/r2/gmug/policy/unc_travel/ch3_ros.pdf. SIA urges DOE not to adopt any proposal that would violate the Coronado Forest Plan, NFMA, and the principle of multiple-use as laid out by the Multiple-Use, Sustained Yield Act by forcing the FS to change its recreation setting indicator to one that is more developed thus in effect, eliminating opportunity for more primitive recreation experiences.

Furthermore, while TEP claims that the Western Corridor will only impact two ROS setting indicators within semi-primitive motorized areas to the point of unacceptability, this is inaccurate. According to the DEIS, there would be no significant change to the “Visitor Impact” setting indicator. But the FS defines “visitor impacts” as “[t]he physical change that human use produces in the environment.”

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. The definition does not specify that “visitors” are solely those entering onto the forest for recreational purposes and in light of the prevalence of the many other uses for our national forests, it seems unlikely that the FS would limit its definition in such a way. Therefore, how can the construction of numerous and physically unattractive transmission poles and the necessary access roads not have a significant, human-caused, physical change in the environment? According to the FS’ ROS system, if site hardening is dominant, it is unacceptable in a semi-primitive motorized area, even if the hardening is in harmony with the existing landscape. www.fs.fed.us. In an area as pristine and undeveloped as that of the Western Corridor it is hard to imagine that the site hardening caused by the proposed transmission lines and necessary access roads would not be entirely out of harmony with the existing landscape and would therefore, be unacceptable according to the ROS.

SIA further questions whether the proposed project would only be “inconsistent” with the “Remoteness” indicator within the semi-primitive motorized area of the Western corridor as the DEIS claims. DEIS at 4-9. The FS states that “Remoteness” is the “perception of being removed from human sights and sounds.”

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. And the FS defines “inconsistent” as “[s]ome incompatibility bet ground conditions and standards for the setting,” and that “[o]ften minor changes can be pursued to rectify these situations.”

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. Constructing the proposed transmission lines in the middle of what is now a remote and pristine area where one is considerably “removed from human sights” is much more incompatible than the definition for “inconsistent” allows for, especially in light of the fact that it would take much more than “minor changes” to “rectify” the incompatibility. Therefore, the DEIS should have acknowledged that the proposed project would alter “Remoteness” conditions within the semi-primitive motorized areas in the Western Corridor from fully compatible to unacceptable.

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Comment No. 11 (continued)

proposed action is the Semi-Primitive Non-Motorized area within the Crossover Corridor. If any access roads remain in this area following line construction (either permanent roads or temporary construction roads that cannot be fully naturalized), this setting would likely shift to Semi-Primitive Motorized. As stated in section 4.12.3, all proposed roads to structure sites would be consistent with the Forest Plan, and would be classified as closed special use roads. Roads to access these maintenance roads would be Level 2 roads. Further, USFS classified roads currently at Level 2 would be reconstructed to no higher than Level 3 during construction of the proposed project, but allowed afterwards to revert back to their original level. With mitigation (including ripping and seeding of roads), the ROS setting Semi-Primitive Non-Motorized would not change.

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SIA urges DOE to reconsider its decision to label the Western Corridor as its preferred alternative as the proposed project would jeopardize important areas of remote and primitive recreation and would cause the FS to violate its Forest Plan, NFMA and the principle of multiple-use management.

The proposed transmission lines would impact the Crossover Corridor most severely in terms of diminished recreation opportunities because the corridor and access roads would traverse through an area of Semi-Primitive Non-Motorized land in Peck Canyon. Because of this, the DEIS states that the project would render the area unacceptable under the remoteness, naturalness, and facilities and site management indicators.

Furthermore, while TEP claims that the visitor impacts to the Crossover Corridor both in Semi-Primitive Non-Motorized and Semi-Primitive Motorized areas will not be significantly changed, this cannot possibly be the case. DEIS at 4-13. As stated above, the FS defines "visitor impacts" as "[t]he physical change that human use produces in the environment."

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. The definition does not specify that "visitors" are solely those entering onto the forest for recreational purposes and in light of the prevalence of the many other uses for our national forests, it seems unlikely that the FS would limit its definition in such a way.

Therefore, how can the construction of numerous and physically unattractive transmission poles and the necessary access roads not have a significant, human-caused, physical change in the environment? According to the FS' ROS system, if site hardening is dominant, it is unacceptable in either a Semi-Primitive Non-Motorized area or a Semi-Primitive Motorized area, even if the hardening is in harmony with the existing landscape. www.fs.fed.us. As similarly stated of the Western Corridor, in an area as pristine and undeveloped as that of the Crossover Corridor, it is hard to imagine that the site hardening caused by the proposed transmission lines and necessary access roads would not be entirely out of harmony with the existing landscape and would therefore, be unacceptable according to the ROS.

SIA further asserts that the proposed project in the Crossover Corridor would alter the remoteness indicator from compatible to unacceptable in the Semi-Primitive Motorized areas. See DEIS at 4-13 (claiming remoteness indicator for Semi-Primitive Motorized areas in the Crossover corridor would change from compatible to inconsistent.). As acknowledged above, the FS states that "Remoteness" is the "perception of being removed from human sights and sounds."

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. And the FS defines "inconsistent" as "[s]ome incompatibility bet ground conditions and standards for the setting," and that "[o]ften minor changes can be pursued to rectify these situations."

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. Constructing the proposed transmission lines within the Crossover Corridor, an area known for its undeveloped and remote qualities because one is considerably "removed from human sights," is much more incompatible than the definition for "inconsistent" allows for; this is especially true because it would take much more than "minor changes"

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to "rectify" the incompatibility. Therefore, the DEIS should have acknowledged that the proposed project would alter "Remoteness" conditions within the semi-primitive motorized areas in the Crossover Corridor from fully compatible to unacceptable.

The DEIS does acknowledge that impacts in the Crossover Corridor would alter naturalness within the SPNM from compatible to unacceptable. DEIS at 4-13. However, SIA believes that the naturalness indicator within the SPM areas of the Crossover Corridor would also be altered to unacceptable despite DEIS claims. *Id.* (claiming that the naturalness of SPM areas in the Crossover corridor would become inconsistent with the implementation of the project). According to the FS, SPM areas are labeled unacceptable for "naturalness" when "maximum modification" occurs. Maximum modification is defined as "human-caused change [that] dominates the surrounding landscape features, however they will appear as natural occurrences when viewed as background scenery."

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. Further, the FS states that for SPM areas are inconsistent for "naturalness" when "modification" occurs. "Modification" is defined as "human-created change [that] borrows from natural forms, colors, shapes, and texture such that the change blends into the surrounding landscape features." *Id.* It is impossible to believe that large, steel transmission towers and power lines will in any way "blend into the surrounding landscape features" such that they will merely change the naturalness indicator from compatible to inconsistent in an SPM area. Rather, it is much more likely that such a project is better described as "maximum modification" because transmission towers and power lines tend to "dominate the surrounding landscape features" and worse, probably will never "appear as natural occurrences when viewed as background scenery." Therefore, the naturalness indicator of the SPM areas in the Crossover Corridor will not merely be inconsistent with the current ROS as the DEIS claims; rather, it will be unacceptable and therefore, in violation of the Coronado National Forest Plan and NFMA.

Although it appears that the Central Corridor would have the least adverse impacts to the FS' ROS, the project still violates the Coronado Forest Plan, NFMA and the principle of multiple use by altering some of the indicators to an unacceptable and inconsistent level. Again, the DEIS states that the remoteness indicator for SPM areas would only change from compatible to inconsistent but this is not the case. As stated repeatedly above, "remoteness" is the "perception of being removed from human sights and sounds," and "inconsistent" is "[s]ome incompatibility bet ground conditions and standards for the setting," and that "[o]ften minor changes can be pursued to rectify these situations."

www.fs.fed.us/r6/willamette/manage/waldolake/planningdocs/waldoappendices.pdf. Constructing the proposed transmission lines in the Central Corridor will have a similar effect on the ROS as in the Western and Crossover Corridors; that is it will alter an area where one is considerably "removed from human sights" to one where transmission lines and towers will be a dominant feature in the area. In addition it would take much more than "minor changes" to "rectify" the incompatibility. Therefore, the DEIS should have acknowledged that the proposed project would alter "Remoteness" conditions within the

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semi-primitive motorized areas in the Central Corridor from fully compatible to unacceptable.

As written, all of the proposed alternatives violate the FS' ROS system and thus are not in compliance with the Coronado National Forest Plan, NFMA, and the multiple-use principle as stated in MUSYA. Further they seek to alter areas that remain some of the few left in Arizona where remote and primitive recreation can be enjoyed and once altered,

The Proposed Projects Do Not Meet the FS' Scenery Management System (SMS) Objectives and Therefore, Violate the Coronado National Forest Plan and Federal Law:

The FS has derived its requirement to manage visual resources on an equal basis with all other resources from the plain language of several federal statutes including the Wilderness Act of 1964, the Wild and Scenic Rivers Act of 1968, NEPA, and NFMA. Landscape Aesthetics Handbook, Appendix B (hereinafter, Handbook). According to this scenery management system (SMS), each NF is responsible for rating different areas of the forest according to their scenic value with one being the highest and seven being of lowest scenic value. *Id.* at 4-14. Furthermore, the Handbook states that "the higher the scenic class, the more important it is to maintain the highest scenic value." *Id.*

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The FS designated much of the Tumacacori EMA as classes one and two and therefore, as having high public value. DEIS at 3-18. All of the proposed corridors will reduce scenic classes of one or two to a lower scenic class upon implementation of the project and this will not only violate the FS principle that it is more important to maintain the highest scenic value, but will also violate the Coronado National Forest Plan, NFMA and other federal statutes that the FS has interpreted to require that scenic resources be treated as equal to other resources on national forests.

Furthermore, in a recent decision by the Regional Forester in this region, a project on the forest was suspended in large part because the scenic quality objectives of the forest would be adversely affected. Appeal #03-03-00-0012-A215, VERITAS, Nogales Ranger District, Coronado National Forest at <http://www.fs.fed.us/r3/planning/appeals/coronado/veritas.pdf> (April 21, 2003) (holding that the proposed action violated the Forest Plan because it did not comply with the visual quality objectives as stated in the Plan).

Additionally, the Aesthetics Handbook has differentiated between structures on the forest that are there for public use and those that are not. It states specifically that "utility structures along travelways and in recreation sites... that are not directly used by the public and do not need to be distinguished by them should be judged as structures

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Comment No. 12

The USFS is directed to consider visual resources on an equal basis with other resources and multiple uses. Multiple use management, however, does not provide that every use be given the same treatment on every acre of National Forest. For this reason, tradeoffs must be analyzed and disclosed so that the responsible official may make an informed decision.

The TEP Final EIS assesses potential impacts to visual resources using two different methods: (1) Scenery Management System (SMS) and (2) Visual Quality Objectives (VQOs). Section 3.2 discusses the existing visual resources and Section 4.2 assesses potential impacts to visual resources using the SMS. Appendix I, which was added to the Final EIS, includes an analysis of visual resources using the VQOs.

Regardless of the method used to assess impacts, the analyses indicates that construction and operation of the transmission line would negatively impact visual resources. The transmission line would be evident to casual forest visitors, and in foreground locations it would dominate the landscape. Per the SMS analysis, reduced Scenic Integrity would result. Per the VQO analysis, the transmission lines would not be consistent with the visual quality objectives in the Forest Plan.

As described in Section 1.2.2.2, USFS Purpose and Need, the USFS purpose and need for action is driven by its statutory responsibility under the FLPMA to consider the use of National Forest System lands for purposes that are in the public interest, such as utility corridors, and that are identified as appropriate in the pertinent agency land and resource management plan. The USFS may deny an application for use of National Forest System lands for a number of different reasons (36 CFR 251.54), such as "the proposed use would be inconsistent or incompatible with the purpose(s) for which the lands are managed, or with other uses," or "would not be in the public interest." The decision by the USFS to approve or deny such authorization will be based, in part, on the findings of the impact analyses reported in this EIS and the proposal's compatibility with the Land and Resource Management Plan (Forest Plan) for the Coronado National Forest (USFS, 1986, as amended).

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serving purposes other than scenery and recreation. They should meet scenic condition objectives, even when viewed in foreground." Handbook at D-2. Therefore, the FS recognizes that a higher standard applies to utility structures than to structures created for public use. This standard is certainly not met for the construction of power lines through the center of an area of high scenic value; such an occurrence would be in violation of the FS' scenic objectives because such objectives will not be met when the utility structures are viewed in the foreground.

Even though SIA advocates adamantly against the adoption of any of the proposed corridors, but would rather DOE consider the no-action alternative or other alternatives not addressed in the DEIS, it should be noted that the impacts to scenery from the proposed transmission lines to the Western Corridor and the Crossover Corridor are by far more devastating than the impacts to the area surrounding the Central Corridor in terms of amount of land affected. According to the DEIS, the transmission lines will reduce scenic integrity for 18,511 acres on the Western Corridor, 18,736 acres on the Crossover Corridor, and only 9,668 acres on the Central Corridor. DEIS at 4-34. So while all three proposed corridors violate federal law, the DEIS is also contrary to the spirit and intent of NEPA because the preferred alternative is one that destroys twice as much forest with high scenic value than another alternative. 42 U.S.C.A. § 4321 (1969) (declaring that it is the national policy to "[e]ncourage ... harmony between man and his environment [and to] promote efforts which will prevent or eliminate damage to the environment..."); see also 40 C.F.R. § 1500.1 ("the NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.").

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Furthermore, a local power plant in Nogales, a reasonable and obvious alternative to the transmission lines as discussed above, would allow the high scenic values of all of the three proposed corridors to remain intact. By eliminating this alternative from the DEIS, DOE has not upheld the spirit of NEPA requiring among other goals, the "[p]reservation of important ... natural aspects of our national heritage, and maintain[ance] of ... an environment which supports diversity and a variety of individual choice." 42 U.S.C.A. § 4331(b)(4). By including only alternatives that significantly diminish the scenic quality of valuable biological and recreational areas, the DEIS contravenes the very heart and soul of NEPA.

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The Proposed Western Route is Located Within a Proposed Wilderness Area:

In light of the outstanding wilderness characteristics of this area and the relatively large roadless area, local, regional, and national organizations and individuals have proposed the Tumacacori EMA as a congressionally designated Wilderness Area. The Friends of the Tumacacori Highlands (www.tumacacoriwild.org), an ad hoc coalition of organizations and businesses dedicated to protecting the Tumacacori Highlands as wilderness, have been working on inventorying and gaining support for wilderness designation since 1998. During this process, hundreds of volunteers have dedicated thousands of volunteer hours to identifying the potential wilderness area and advocating

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Comment No. 12 (continued)

Appendix H describes proposed amendments that would be required in order to implement any of the action alternatives. As discussed in that Appendix, the proposed amendments would permanently lower objectives for visual resource management in the transmission line corridor. The report in Appendix I entitled, *Proposed TEP Powerline - Project Analysis Using Visual Quality Objectives*, provides information about the locations where visual quality objectives would be changed.

The commentor's statement that the Central Corridor would have less overall impact to visual resources than either of the other proposed corridors is supported by the analyses.

Comment No. 13

The Federal agencies are aware that environmental groups are interested in achieving Federal wilderness designation for a large portion of the Tumacacori EMA. Maps provided by commentors indicate that all corridor alternatives considered in this EIS cross the area suggested for wilderness designation. Presence of a transmission line would not necessarily preclude wilderness designation, as the Wilderness Act of 1964 and Forest Service regulations (36 CFR 293.15) allow for the existence, establishment and subsequent maintenance of transmission lines in wilderness areas. Information about the wilderness proposal has been added to Section 5.2.4 of the FEIS as a potential future action.

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cont. | on its behalf. Please see the attached map labeled "The Tumacacori Highlands." All of the proposed alternatives are incompatible with such wilderness designation.

The DEIS Should Have Addressed the Projects' Effects on Illegal Immigration and the Border Patrol:

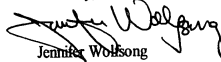
14 | Another impact that the DEIS does not recognize is the opening of a human migration corridor within the areas of the proposed projects but especially within the remote western portion of this national forest unit. Both smugglers and undocumented aliens (UDA) depend on roads to move north, even while on foot because it keeps them from getting lost. The West side of the Tumacacori and Atascosa Mountains (Western and Crossover routes) is presently one of the least impacted routes in southern Arizona by smugglers and UDA's, primarily due to the scarcity of roads. If either the Western or Crossover route is chosen, there will be a well marked, north/south superhighway, which connects the border with highways to the north. This area will suddenly begin to feel the impacts that other areas of southern Arizona currently do. What are these actual impacts? How many people are projected to use this migration corridor in the course of a week or a year? What is the impact to this area? This will be one of the single largest impacts to the landscape, to wildlife, sensitive flora and fauna, and to the public. Why is this not addressed in the DEIS?

In addition, if such a corridor is opened up, it will serve to stretch the Border Patrol ever thinner. What will be the impact of increased Border Patrol activity? This is not addressed in the DEIS. What does the Border Patrol and the Department of Homeland Security think of this project? DOE should be consulting with both of these agencies and this should be reflected in the DEIS. We can find no mention of such a consultation.

Conclusion:

15 | SIA urges the DOE and cooperating agencies to seriously consider the above comments. As the multitude of deficiencies suggests, this document is severely insufficient for the scope of this project. Further, as the DEIS does not meet numerous mandatory legal requirements, the proposed projects not only violate the letter of the law but they contravene the very purpose and spirit of such laws and regulations. It is disturbing to think that any federal agency would attempt to carry out a project that deviates so dramatically from such clear and decisive legislative intent. We urge DOE to withdraw this DEIS and reissue it at a later date when the above-mentioned deficiencies are appropriately redressed.

Sincerely,


Jennifer Workong
Legal Associate

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Comment No. 14

As documented in Table 10-2 of the Draft EIS, the U.S. Border Patrol did not respond to DOE's solicitation of comments regarding the proposed project prior to publication of the Draft EIS, and therefore, the Draft EIS addressed in a general manner the potential impacts on illegal immigration and U.S. Border Patrol operations and the resulting environmental impacts.

In response to public comments, the Federal agencies again solicited comments from the U.S Border Patrol. Based on the U.S. Border Patrol's response (USBP 2004) to the Federal agencies' request, the Federal agencies have revised Sections 4.1, Land Use and Recreation; Section 4.12, Transportation; and Chapter 5, Cumulative Impacts of the Final EIS. The U.S. Border Patrol's response generally reinforced the information on which the relevant analysis in the Draft EIS was based. The U.S. Border Patrol stated that the roads associated with the construction and maintenance of the proposed project would contribute to an increase in illegal immigrant and narcotic smugglers in the area and affect U.S. Border Patrol operations. The U.S. Border Patrol stated that although the proposed project would not create a single north-south route and roads would be closed or otherwise blocked, illegal immigrants and narcotic smugglers would be attracted to the area to use portions of the proposed access roads, resulting in a need for the U.S. Border Patrol to increase its presence in the Coronado National Forest.

For more information on the effects of illegal immigration, see *Report to the House of Representatives Committee on Appropriations on Impacts Caused by Undocumented Aliens Crossing Federal Lands in Southeast Arizona, April 29, 2002* (House 2002).

Comment No. 15

The Federal agencies have addressed each of the issues raised by the commentator, as described in the previous responses. The Draft EIS was prepared in accordance with Section 102(2)(c) of NEPA, the Council of Environmental Quality (CEQ) regulations (40 *Code of Federal Regulations* [CFR] Parts 1500-1508), and all applicable laws, regulations, and agency policies. The Federal agencies have determined that the Draft EIS does not need to be re-issued for additional review.

